

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1375 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

K A CHAUHAN

Versus

REGIONAL DIRECTOR

Appearance:

MR MUKESH R SHAH for Petitioner

MR YH VYAS for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/08/1999

ORAL JUDGEMENT

1. The petitioner, an Officer of the Oil and Natural Gas Corporation Ltd. by this petition under Article 226 of the Constitution challenges the order of the Corporation dated 14th February, 1995, annexure 'F' at page No.38 under which the order giving him promotion to the post of Assistant Fire Officer w.e.f. 1-1-1986 in the pay scale of Rs.1030-2000 (Pre-revised) and Rs.2250-4150 (Revised) under 22 years policy has been

taken back. This order has been passed on the ground that the petitioner under the policy aforesaid was only entitled for promotion to the post of Fire Inspector Gr.I w.e.f. 1-1-1986, but by mistake this promotion has been given to him to the next higher post.

2. Learned counsel for the petitioner challenges the validity of this order on the following grounds:

(i) this promotion has been given under the order dated 20th May, 1988 and subsequently the promotees were also confirmed on the post which is sought to be taken back after more than six years.

(ii) that it is not the case of mistake but the post of Fire Inspector, Gr. I was abolished and the petitioner's promotion could have been only to the post of Assistant Fire Officer.

(iii) that even if it is taken to be a case of mistake or error in giving of the promotion to the petitioner then his case should have been considered for giving the benefit of 22 years services as per the policy of the Corporation, which too has also not been done in the matter.

3. Shri Vyas, on the other hand, supported the order passed by the Corporation and impugned in this special civil application.

4. This writ petition was placed in the Court for preliminary hearing on 1st March, 1995 on which date, the same has been admitted and interim relief in terms of para-14 (C) has been granted. It is not in dispute that subsequently this order of grant of interim relief has been considered and that order was vacated. Against the order of the learned Single Judge vacating the interim relief granted in favour of the petitioner, the petitioner preferred an L.P.A. but that has been withdrawn.

5. Learned counsel for the petitioner has failed to satisfy that the post of Fire Inspector, Gr. I, has been abolished. Only document on which he placed reliance in support of this contention is the order dated 6th February, 1984 but this document is of little help to the petitioner. Learned counsel for the petitioner contended that it is for the respondents to show that this post of Fire Inspector, Gr. I, was not abolished. I fail to see any justification in this contention for the obvious

reason that it is the petitioner on whom this onus lies which he has failed to discharge. Under the order aforesaid, the promotion which has been given to some of the Inspectors Gr. II, to the post of Fire Inspector, Gr. I, were cancelled. The promotions were given under the order dated 25th June, 1983. In the order dated 6th February, 1984, it is nowhere stated that as the post of Fire Inspector, Gr. I, has been abolished these promotions are cancelled. Otherwise also, this order does not stand to any logic to support the contention of the learned counsel for the petitioner. In case it would have been a case of error in giving the promotion to the post of Fire Inspector, Gr. I, which is alleged to be abolished then there should have been the order of rectification of treating this promotion to the post of Assistant Fire Officer.

6. The post of Assistant Fire Officer is a post of higher pay scale in the hierarchy than the post of Fire Inspector, Gr. I. The petitioner could not have been promoted to the next higher post without first crossing the intervening post, the feeder post to the promotion post. This is clearly a case of error which has been committed by the Corporation in giving promotion to the petitioner to the post of Assistant Fire Officer. It has been corrected under the impugned order. It is true that the petitioner has worked for longer period on the promotion post and that is the reason that before passing that order the minimum requirement of the principles of natural justice, which is to be followed has been followed and further because of delay the order has been passed that recovery of the excess amount paid to the petitioner may not be made. The Corporation acted very fairly and reasonably in passing of this order to which no exception can be taken.

7. So far as the last contention is concerned, if the petitioner considers that some of the benefits for which he is entitled have not been given he is at liberty to file a detailed representation to the Corporation and in case such a representation is filed then the same may be decided within a period of two months from the date of receipt thereof.

8. In the result, this special civil application fails and the same is dismissed. Rule discharged. No order as to costs.
